**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 9821 of 2006**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE RAVI R.TRIPATHI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**BANK OF INDIA**

**Versus**

**AKHIL GUJARAT COTTON MAJDDOR SANGH AND OTHERS**

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**Appearance :**
MR PRANAV G DESAI for the Petitioner
MR KM PATEL WITH MR ASHISH H SHAH for Respondent No.1
MR MUKESH H RATHOD for Respondent No.3
MR DH RAHEVAR for Respondent No.4

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**CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI**

**Date : 02/09/2006**

**ORAL JUDGMENT**

1. After the learned advocates for the parties are heard and the matter is discussed at length, the following order is passed:

I. The amount due and payable to each of the workers on the roll of respondent No.2 company shall be ascertained and quantified by the Chartered Accountant from the panel of the Official Liquidator, to be nominated by the petitioner bank on the basis of the records of respondent No.2 company presently lying with the auditor of the respondent No.2 company, M/s.Jindal Associates. Exercise of quantification of the dues shall be completed within four weeks. The amount shall be ascertained and quantified in presence of/with the assistance of the representative of the petitioner bank and the representative of the respondent union. The cost of the Chartered Accountant be incurred out of Rs.5 crores set apart under the order of this Court and the same be shared on *pari passu* basis by the parties.

II. The workers dues shall be calculated as on 15.01.2005, i.e. the day on which possession of the securities of respondent No.2 company is taken over by the petitioner bank under the Securitisation Act. For the purpose of computation of the dues of the workers, the said date will be treated as notional date of

the closure of the unit.

III. After the total amount due and payable to all the workers on the roll of respondent No.2 company is ascertained and quantified by the Chartered Accountant, the amount payable as workers dues as per *pari passu* basis shall be deposited by the bank, out of Rs.5 crores kept aside as per the earlier order passed by this Court in the Labour Court at Ahmedabad.

IV. After the amount is deposited by the petitioner bank with the Registry of the Labour Court, Ahmedabad, the amount payable to the concerned workers shall be disbursed within four weeks from the date of deposit by the Labour Court by Account Payee cheque favouring each workman in presence of and on proper identification by the representative union. If any amount remains surplus with the Labour Court after carrying out the above exercise, the same be refunded back to the petitioner bank immediately.

V. After the amount as indicated hereinabove deposited by the petitioner bank, the petitioner bank shall be deleted as party respondent to the proceedings taken by respondent Nos.1, 3 and 4 union pending before

the Labour Court and the workers shall not have any claim of whatsoever nature against the petitioner as well as Dena Bank.

VI. The acceptance of payment by the workers on *pari passu* principle will not be construed as acceptance of payment of their dues in full and the concerned workmen and representative union/the workers have the right surviving to recover the balance amount due and payable from respondent No.2 company in accordance with law. If the workers recover full amount of dues from respondent No.2 company then in that event, the total *pari passu* amount deposited by the petitioner bank shall be refunded to the petitioner bank after recovery of the amount by the workers.

VII. The above order for payment of workers dues on *pari passu* basis is passed considering the special facts and circumstances and the same shall not be treated as precedent. All the legal contentions and measures of the petitioner bank is kept open and also the petitioner bank's right of recovery of its dues, in accordance with law, is kept open.

2. The petition is disposed of with the above

directions. Rule is made absolute in the aforesaid terms with no order as to costs.

Liberty is accorded to the parties to apply to this Court in case of difficulty.

**(RAVI R.TRIPATHI, J.)**

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